

# Memorandum

330.2305.900

To: Mr. Glenn Bystorm

Date: July 10, 1996 and 1/19/84

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed your memorandum of January 19, 1984 to San Francisco District Principal Auditor.

We are in agreement with his conclusion, as follows:

**Lease Proceeds.** The amount shown on the lessor's worksheet as "mandatory purchase price" is regarded as additional gross receipts because the specific language on the worksheet (assumed to agree with contract language) denotes the amount to be an option price, as opposed to an interest or finance charge notwithstanding that the economic substance of the charge may appear to be in the nature of such a charge. This principal applies to both leases that are sales at the inception and true leases on which the lessor timely elected to report tax on cost,

If the contract and the worksheet explicitly provided that the amount is a deferred interest charge, it may represent a deferral of the, portion of the yield rate. However, without such contractual provisions, the only conclusion that can be reached is that the charge represents an option price.  
1/19/84

Gary Jugum by MB

# Memorandum

330.2305.900

To: Mr. Glenn Bystorm

Date: May 14, 1996

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed D. F. Brady's memorandum of January 19, 1984 to San Francisco District Principal Auditor.

We are-in agreement with his conclusion, as follows:

**Lease Proceeds.** The amount shown on the lessor's worksheet as "mandatory purchase price" is regarded as additional gross receipts because the specific language on the worksheet (assumed to agree with contract language) denotes the amount to be an option price, as opposed to an interest or finance charge notwithstanding that the economic substance of the charge may appear to be in the nature of such a charge. This principal applies to both leases that are sales at the inception and true leases on which the lessor timely elected to report tax on cost,

If the contract and the worksheet explicitly provided that the amount is a deferred interest charge, it may represent a deferral of the, portion of the yield rate. However, without such contractual provisions, the only conclusion that can be reached is that the charge represents an option price.  
1/19/84

Gary Jugum

**M e m o r a n d u m****330.2305.900**

To: San Francisco District Principal Auditor

Date: January 19, 1984

From: Principal Tax Auditor

Subject:

This is in response to your memorandum of December 28, 1983, in which you asked whether the mandatory purchase price (MPP) as shown on the taxpayer's "New Lease Worksheet" can be regarded as additional gross receipts in both leases which are to be recharacterized as sales from inception and for true lease agreements where the taxpayer made a timely election to report on cost.

The information and worksheets you forwarded were reviewed with Gary Jugum of the legal staff. We conclude that the MPP is subject to tax because the language of the worksheet, which we assume agrees with the language in the contract, denotes the additional amount shown to be an option price, as opposed to an interest or finance charge. While the economic substance of the charge may appear to be in the nature of an interest or finance charge, the legal reality is that the MPP is stated as a form of option price. Accordingly, tax applies to the MPP for leases recharacterized as sales at inception, and for the true lease contracts where the option to purchase was exercised. This approach is consistent with our position on --- --- --- since the option price was picked up in the audit and only the identifiable interest, finance and carrying charges were excluded.

If the lease contract and worksheet explicitly provided that the amount was a deferred interest or finance charge, then the taxpayer may have a valid argument in support of his contentions that the Lease Management System (LMS) residual represents a deferral of a portion of the yield rate. Without such contractual provisions, and regardless of whether both the lessor and the lessee agree that the deferred payment represents an interest or finance charge, we have no other legal basis but to conclude that the MPP is an option price subject to tax.

GAB:nc